IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.273/2004.

Date of Decision :25.4.2007.

State of H.P. and another. …Petitioners.

Versus:

Megh Singh and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioners: Mr.C.B.Singh, Deputy Advocate General.

For Respondents. Mr.A.K.Gupta, Advocate with Mr.R.D.Kaundal, Advocate.

Sanjay Karol, J (Oral).

Before the matter was heard, Mr.A.K.Gupta, learned counsel appearing for the respondents stated that the Tribunal has ordered re-instatement w.e.f. 17.7.1998 (the date of the reference) for the purpose of continuity in service and seniority and has not awarded any back wages and arrears. He stated that his clients are ready to furnish undertaking in the form of his statement that for the purpose of continuity in service and seniority the date fixed by the Tribunal i.e. 17.7.1998 be substituted as 25.4.2007.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

His statement itself be taken as an undertaking to the Court that the respondents herein shall not claim an arrears, back wages and pecuniary benefits of any kind. Oral undertaking at the Bar has been accepted and taken on record.

The present writ petition has been filed by the State whereby the award dated 1st January, 2004 passed by H.P.Labour Court, Shimla in Reference No.75 of 1998 was decided whereby the respondents herein were directed to be re-instated as daily rated Meter Ledger Clerk from 17.7.1998 without any back wages. The petitioner-State has assailed the award on two grounds: (i) that it is an un-reasoned order and (ii) that the plea of delay and laches/limitation was not considered by the Tribunal at all.

A perusal of the award shows that the same has been passed on the basis of the admission made by the petitioner-State. A chart showing the number of days on which the respondents herein were engaged by the State on different dates has already been placed on record before this Court. I have perused the same. The order passed by the Tribunal is on the basis of the admission and after perusal of the record, it bears out to be factually correct also. In this view of the mater, objection No.1 is not sustainable.

With regard to the second objection that is non-consideration of the plea of limitation/delay and laches, no doubt, the State has taken the plea which the Tribunal has failed to consider, however, in exercise of equitable jurisdiction under Article 226 of the Constitution in the

peculiar facts and circumstances of the case, it would be open for me to look into the same and decide rather than remanding the matter back for consideration.

Mr. A.K.Gupta, learned counsel appearing for the respondents has brought to my notice various authorities to contend that the plea of limitation, delay/laches has to be considered in the facts and circumstances of the each case. The delay in the instant case is between 7 to 14 years. The Tribunal has already come to the conclusion that there is admission on the part of the State that the respondents were in gainful employment for more than 240 days . The State was enjoined with the duty to comply with the provisions of the Industrial Disputes Act, 1947 (herein after referred to as `the Act') before disengaging the respondents. Undisputedly, the provisions of Section 25-F of the Act had not been complied with. The respondents were not only deprived of the benefit of being in service but also forced to un-necessarily litigate to enforce their rights. Keeping in view the attending circumstances, no case of dismissal of claim has been made out on the ground of delay and laches. Undisputedly the matter was also pending before the Conciliation Officer for some time. This Court has already condoned the delay of 14 years in CWP.No.1356 of 2001 titled as State of H.P. Vs.Nanku Ram and others.

For the reasons stated above, I am not inclined to interfere with the award passed by H.P. Labour Court, Shimla in Reference No.75 of 1998 decided on

1.1.2004 except to the extent of an undertaking given by the respondents. Accordingly the award is modified to the extent that the undertaking given by the respondents in the form of the statement of the counsel is taken on record. The date of re-engagement of the respondents-employees for the purpose of continuity in service and seniority shall be 25.4.2007 and they shall be entitled for their wages from the date of joining. The learned counsel for the respondents apprehend that the petitioners may not allow the respondents to join their services. In these circumstances, the petitioners are directed to re-engage the respondents immediately and not later than 15th May, 2007. The writ petition is accordingly disposed of.

(Sanjay Karol),
Judge.

April 25, 2007(R)